

**IN THE COURT OF APPEAL
(CRIMINAL DIVISION)**

REGINA

v

PERRY WACKER

**AMENDED REFERENCE PURSUANT TO SECTION 36
CRIMINAL JUSTICE ACT 1988**

1. The offender Perry Wacker is aged 33 having been born on the 6th day of September 1967.
2. Following conviction by unanimous verdict of the jury on 5th April 2001 on a single count of conspiracy to carry out arrangements for facilitating entry into the United Kingdom of persons they knew to be illegal entrants, the offender was sentenced to 8 years' imprisonment. Ying Guo, his co-defendant, was sentenced to 6 years' imprisonment. The offender alone was also convicted of 58 counts of manslaughter and sentenced to six years' imprisonment consecutive, making a total sentence of 14 years' imprisonment.
3. The Judge was Moses J. sitting at the Maidstone Crown Court.
4. Brief facts:

- a) The case concerned the illegal smuggling of 60 Chinese nationals into this country on 18th June 2000. 54 men and 4 women were found dead in the back of a refrigerated container unit driven by the offender when it was searched by Customs Officers at Dover.
- b) The cause of death in each case was suffocation. An air vent in the container had been deliberately closed by the offender in order to reduce the risk of the authorities detecting the true nature of his cargo.
- c) The two survivors were able to describe the manner in which they were brought to the United Kingdom.
- d) Coincidentally they both flew from Beijing to Yugoslavia, then travelled overland through Hungary to Austria. They flew to Paris and spent a number of nights at an address with many other Chinese nationals.
- e) Their journey was arranged by a criminal organization in China called The Snakeheads, whose influence extends across Europe. At each stage of the journey 'minders' met the immigrants and organized passports, transportation and accommodation.
- f) The two survivors described how they were charged in excess of £10,000. The first installment was collected before they left China. They understood that upon arrival in England they would be detained in a safe house until the balance was paid.
- g) On 16th June 2000 the offender and a man called Leo Nijveen attended a wholesale fruit and vegetable merchant near Rotterdam and loaded a large number of tomatoes into an old refrigeration unit which the offender had purchased some days before.

- h) Leo Nijveen is currently on trial in Holland for offences arising out of his involvement in the smuggling of illegal immigrants in to the United Kingdom.
- i) On 18th June 2000, the two survivors and others were driven to a warehouse on the outskirts of Rotterdam. En route they were given the telephone number of Ying Guo. They were told to contact her if they were arrested as she worked for solicitors in England and could arrange to get them bail and help with applications for political asylum. Guo's telephone number was later found written on the clothing and papers of a large number of those who died in the container.
- j) When they arrived at the warehouse the two survivors joined a queue of people at the back of a lorry parked inside the building. They sat on the floor in the forward section of the container with their knees against their chests as conditions were extremely cramped. They were given water, tomatoes and black rubbish bags. Once all 60 were inside, two white men loaded boxes of tomatoes onto wooden racks at the rear of the container thereby hiding their presence. The offender's fingerprints were later found on some of the struts of wooden racks and on tomato boxes.
- k) The refrigeration unit was not working. Once the rear doors of the container were closed the unit was effectively sealed against the ingress of any significant quantities of air save through a vent hatch door. Those inside the container were able to see light streaming through the opening. They were told that when the hatch was closed or the lorry was stationary, they were not allowed to talk.

The offender's fingerprints were later identified on the external surface of the air vent hatch.

- l) The tachograph for the lorry showed that the vehicle left Rotterdam at about 15.00 hrs. It arrived at Zeebrugge docks at about 18.00 hrs. where the offender closed the air vent. An hour later the lorry boarded the P & O Ferry, European Pathway. The crossing to Dover took about 5 hours.
- m) Within a couple of hours the temperature inside the lorry became intolerable. Sunday 18th June was one of the hottest days of the year. The remaining survivors recall someone trying unsuccessfully to open the air vent as they were all experiencing difficulty in breathing. Within a short time, those inside the container began to panic and banged the sides with pieces of wood and a screwdriver.
- n) The offender made no effort to check their welfare, still less to open the vent.
- o) At about 23.35 hrs Customs and Excise Officers at Dover eastern Docks stopped the lorry and asked the offender to drive the lorry to a nearby examination bay. Their suspicions were aroused as the refrigeration unit was turned off. The ventilation grille was still closed. The offender said that he had picked up a load of tomatoes in Rotterdam which were destined for "Lidl, Bristol Industrial Estate, Bristol, UK." No arrangements had been made for such a delivery. He claimed that he had not seen the tomatoes being loaded.
- p) When the rear doors of the container were opened one of the officers climbed up and looked over the top of the tomato boxes beyond which he thought he saw bodies. He called out but got no response.

- q) Immediately Customs Officers and Harbour Board employees set about the task of removing the tomato boxes and the dead bodies of those within the container. The two survivors who had lost consciousness were rescued and taken to hospital.
- r) The offender appeared calm and unconcerned during the course of the process of unloading the bodies from the container. He was arrested.
- s) In interview the offender denied any knowledge of the 60 stowaways in the refrigeration unit. He claimed the tractor unit and container had been purchased by a man called van der Spek. He realised that the refrigeration unit was not working and believed that the tomatoes might perish before he reached Bristol. He said that the lorry was already loaded when he picked it up.
- t) On 22nd June 2000 he was charged with 57 offences of manslaughter and two offences of facilitating the entry of illegal entrants.
- u) The prosecution case upon the allegations of manslaughter was presented on the basis of gross negligence. The offender owed those he knew to be inside the container a duty of care and breached that duty by failing to ensure that they had sufficient care to sustain life or showed a reckless disregard for their health and welfare.
- v) The offender gave evidence at trial and maintained his earlier claim that he was unaware of the true nature of his cargo.

5. The following aggravating circumstances appear to be present:

- a) The offender was centrally involved in arrangements made for the transportation of 60 illegal immigrants into this country.
 - b) These arrangements were planned in advance and involved the acquisition of a lorry which was then converted to disguise the true nature of the cargo. False documentation was also used.
 - c) The reason for the offender's involvement in the conspiracy was financial gain.
 - d) The offender carried 60 stowaways, in appalling conditions in order to increase the profitability of the venture.
 - e) He closed the air vent in Zeebrugge shortly before boarding ship for Dover thereby depriving them of sufficient air to stay alive over the 6 hour journey.
 - f) During the journey he did not check their condition.
 - g) As a result of his gross negligence 58 people lost their lives in horrific circumstances.
6. The following mitigating circumstances appear to be present:
- a) The offender did not have a bad criminal record.

7. It is proposed to rely upon the following authorities:

R v Simpson, unreported, February 1,

R. v. Smith, unreported, February 13, 1975

R. v. Jones (1980) 2 Cr.App.R.(S.) 152

R. v. Bunch unreported, November 6, 1971

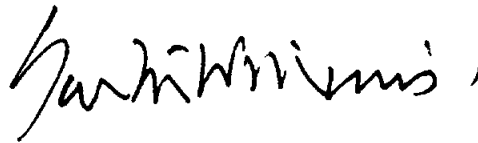
R. v. French (1982) 4 Cr. App. R.(S.) 57)

A-G's Ref (No 5 of 1989) 90 Cr. App.R.

R v Latham 1997 Crim.L.R. 140

R v Bowen unreported C.A. June 30, 2000

8. It is submitted that a total sentence of 14 years' imprisonment failed to reflect the many aggravating circumstances of the case. ~~It is further submitted that consecutive sentences were wrong in principle and that any sentence for conspiracy should have been ordered to run concurrently with the terms imposed for the manslaughter counts.~~ This is a case to which Part IV of the Criminal Justice Act 1988 applies. Accordingly, I apply for leave to make a reference to the Court of Appeal.



HER MAJESTY'S ATTORNEY GENERAL

Original dated 27th day of March 2001

Amended Reference dated 29th day of May 2001

Attorney General's Chambers
9 Buckingham Gate
London SW1E 6JP



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Our Ref: ULS/56 /2001

30 April, 2001.

Dear Sirs

R v PERRY WACKER
LAW OFFICER REFERENCE: Pt IV Criminal Justice Act 1988
UNDULY LENIENT SENTENCE

I understand you represented the above named who appeared before Moses J at Maidstone Crown Court on 5th April 2001

The Attorney General has decided to apply to the Court of Appeal to refer the sentence imposed upon your client under the provisions of section 35 and 36 of the Criminal Justice Act 1988. The basis of such an application is that it appears to him that the sentence imposed is unduly lenient.

Accordingly, I **attach** a copy of the Reference lodged at the Criminal Appeal Office. I should be grateful if you would inform your client of the Law Officer's decision.

For your assistance I **enclose** copies of the judgement in Attorney General's References Nos. 4 and 5 of 1989 which set out the general principles used by the Court of Appeal in deciding these cases. I also **enclose** copies of the rules of court for references. Should you have any queries as to the procedures that apply in these cases please do not hesitate to contact me.



The Court of Appeal will hear the application on the basis that the factual content of the Reference is agreed. If, therefore, there are any factual matters which you consider inaccurate I would be grateful if you would let me know as soon as possible. **The Lord Chief Justice, in dealing with a case brought under these provisions, has emphasised that it is the responsibility of the offender's solicitors to notify the Attorney General if the reference does not accurately reflect the basis on which the judge sentenced, either following a plea or after a trial.**

The Law Officers will also review an application to refer a sentence in the light of any new material available. Applications have in the past been withdrawn on the basis of such material or on the content of an updated report. If, however, there is any fresh material you intend to put before the Court we should be grateful if you would forward a copy of it to us.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Kristin Jones', with a long horizontal flourish extending to the right.

KRISTIN JONES

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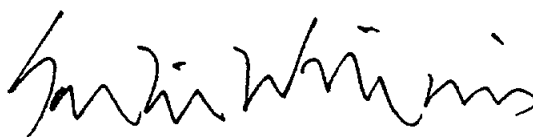
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R v Latham 1997 Crim.L.R. 140

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9. It is submitted that the sentence of a fine of £500 was unduly lenient. This is a case to which Part IV of the Criminal Justice Act 1988 applies. Accordingly, I apply for leave to make a reference to the Court of Appeal.



HER MAJESTY'S ATTORNEY GENERAL

Dated this *27th* day of March 2001

**IN THE COURT OF APPEAL
(CRIMINAL DIVISION)**

BETWEEN:

PERRY WACKER

v

REGINA

**ADVICE ON APPEAL AGAINST CONVICTION AND SENTENCE, and
GROUNDS OF APPEAL AGAINST CONVICTION AND SENTENCE**

1. The Applicant, Perry Wacker, a Dutch national, was tried before the Honourable Mr. Justice Moses and a jury at the Crown Court at Maidstone between the 26th February 2001 and the 5th April 2001.
2. Mr. Wacker was jointly charged by Count 1 of the indictment with being a party with one Ying Guo and other persons unknown to a conspiracy to be concerned in carrying out arrangements for facilitating entry of illegal entrants, contrary to Section 1 of the Criminal Law Act 1977.
3. By Counts 6 to 63 of the indictment Mr. Wacker was charged alone with the manslaughter of persons unknown, identified as "Victim 1" through to "Victim 58".

4. Both Mr. Wacker and Miss Guo were convicted by the jury of the all of the counts each faced. Mr. Wacker was sentenced upon Count 1 to a term of 8 years imprisonment. Upon each of the 58 Counts of manslaughter Mr. Wacker was sentenced to 6 years imprisonment upon each Count concurrently, but to run consecutively to the sentence of 8 years imprisonment upon Count 1, a total of 14 years imprisonment. Miss Guo was sentenced to 6 years imprisonment upon Count 1.
5. No verdicts were sought upon Counts 2 – 5 of the indictment, which counts reflected substantive offences alleged against Mr. Wacker, subsumed within the count of conspiracy, and upon which the Crown had elected upon at the conclusion of the evidence.

THE PROSECUTION CASE

6. At about 11.15 p.m. on the 18th June 2000 Mr. Wacker drove a tractor unit and trailer upon which was a non-operating refrigerated container, off the British registered vessel, the European Pathway, upon its arrival at Dover Eastern Docks from Zeebrugge.
7. Mr. Wacker's lorry was selected to be stopped by officers of Customs & Excise. He was asked a series of questions (some of the answers to which the Crown contended were lies) and he provided a CMR which indicated that his load was tomatoes and that his destination was a supermarket, Lidl, situated upon an Industrial Estate in Bristol. As was later to be proved, there was no Lidl on any Bristol Industrial Estate and no arrangements had been made by Lidl with the suppliers named on the CMR, nor the transport firm 'Van der Spek Transporten' of Rotterdam, for such a delivery.
8. The seal to the container on the trailer was cut and a search commenced. Inside the container officials found 60 Chinese illegal entrants. Fifty-eight were dead. Two survived. All of the deceased died of irreversible cerebral anoxia, which was consistent with having been caused by anoxia (a lack of

oxygen) and hypercapnia (an elevated concentration of carbon dioxide in the blood). The only air vent to the container was found to be closed.

9. Mr. Wacker was arrested and subsequently interviewed. He gave a detailed account of his movements during the course of the 18th June and over the previous days. He explained how it was that he was the driver of the lorry that day. It was the Crown's case that a number of lies were told by Mr. Wacker during the course of his interviews.
10. The Crown's subsequent enquiries established their case against Mr. Wacker. It was contended, inter alia:
 - (a) that Mr. Wacker had been a party with others in Rotterdam to the selection, then purchase, of the lorry and trailer a few days before the journey of the 18th June 2000;
 - (b) that thereafter a sealed refrigerated container (with a refrigeration unit which did not function) was purchased;
 - (c) that an order for the purchase of tomatoes was made to a wholesaler in Barendrecht, Rotterdam, and that Mr. Wacker and a friend of his, Leo Nijveen, had collected those tomatoes on Friday, 16th June 2000 from the wholesaler's warehouse;
 - (d) that Mr. Wacker had been a party to the purchase of lengths of wood on Saturday 17th June, and then the subsequent construction of a framework within the refrigeration container, behind which were to sit the illegal entrants and in front of which (closest to the doors) were to be placed the boxes of tomatoes as "cover";
 - (e) that Mr. Wacker had been present in a warehouse in the Waalhaven area of Rotterdam, which warehouse was the location for the construction of the framework, and then for loading and departure of the illegal entrants on the 18th June;

- (f) that Mr. Wacker was very closely connected through friendship and previous employment with Leo Nijveen; that Leo Nijveen had been the driver of a lorry and container containing 50 Chinese illegal entrants who had disembarked onto the vehicle deck of a ferry travelling to Dover on the 5th April 2000;
- (g) that Mr. Wacker's and Mr. Nijveen's fingermarks, and the fingermarks of two Turkish men (said to be co-conspirators), Ozcan and Demir, were found (variously) on the wood in the container at Dover, the wood in the warehouse in Waalhaven, on the boxes of tomatoes on the container, on the interior and exterior surfaces of the container itself, and that Mr. Wacker's fingermark was found on the exterior surface of the air vent of the container;
- (h) that the lorry and container had been loaded with the 60 Chinese at the warehouse in Waalhaven and that the number of people in the container meant that the conditions were extremely cramped and confined;
- (i) that, from analysis of the tachograph, the lorry had departed from Rotterdam at approximately 2.53 p.m. continental time. That there were several short stops before a stop of significance between 5.49 and 6.01 p.m. when, 4 ½ kilometres before Zeebrugge port, the two survivors stated that the vent to the container was closed;
- (j) that the construction of the vent to the container, and its means of restraint, meant that the vent could not have been closed other than by human intervention;
- (k) that during the course of the journey (as there had been extensively on previous days) there was telephone contact between Mr. Wacker and his alleged co-conspirators;
- (l) that, having boarded the ferry at about 7.13 p.m., by 9 p.m. the occupants were beginning to feel uncomfortable, panic began to set in, and there was shouting and banging at the sides of the container before the occupants drifted into unconsciousness followed, save for the two, by death;

- (m) that 27 of the deceased had Miss Guo's telephone number on them, and that the number appeared on a further 16 times on items of property that could not be attributed to any particular individual;
- (n) that on one of the pieces of paper bearing Miss Guo's mobile telephone number there was written another number 07715 860756. On a piece of paper in the cab of Mr. Wacker's lorry was found a piece of paper with the number 07931 120081, which was the number of a pre-pay mobile telephone with no subscriber details and that 07931 120081 had called 07715 860756 twice, once on the 16th and once on the 17th June 2000;
- (o) that 7 of the illegal entrants who had disembarked onto the vehicle deck of the ferry travelling to Dover on the 5th April 2000 from the lorry driven by Mr. Wacker's friend and fellow employee, Leo Nijveen, completed landing cards which gave Miss Guo's telephone number as their point of contact in the United Kingdom;
- (p) that documentation found in the cab of Mr. Nijveen's lorry on the 5th April bore Mr. Wacker's fingerprints; and
- (q) that documentation found in Mr. Wacker's car in Rotterdam contained details of his ferry crossing on the 18th June and a drawing of the framework within the container.

BASIS OF PROSECUTION CASE ON MANSLAUGHTER COUNTS

- 11. Following the judgement of the House of Lords *R v Adomako* [1994] 99 Cr.App.R. 362, the Crown put the counts of manslaughter in the following way:
 - (i) Mr. Wacker owed a duty of care to those persons who he knew to be in the container;
 - (ii) That he breached his duty of care by failing to ensure that those in the container had sufficient air and/or ventilation to sustain life;

- (iii) That the breach of duty caused the death of the persons identified by Counts 6 to 63; and
- (iv) Having regard to the risk of death involved, Mr. Wacker's conduct, viewed objectively, was so bad as to be characterised as grossly negligent, and therefore criminal.

SUBMISSION

12. At the conclusion of the Crown's case it was submitted on behalf of Mr. Wacker that each of the 58 counts of manslaughter should be withdrawn from further consideration by the jury by reason of the fact that the Crown had failed to establish that, as a matter of law, Mr. Wacker owed a duty of care to any one of the 58 deceased occupants of the container.
13. The principles outlined by Lord Mackay of Clashfern L.C. in *R v Adomako* [1994] 99 Cr.App.R. 362, at p.369, establish that

“... The ordinary principles of the law of negligence apply to ascertain whether or not the Defendant has been in breach of a duty of care towards his victim who has died. If such a breach of duty is established the next question is whether that breach of duty caused the death of the victim. If so, the jury must go on to consider whether that breach of duty should be characterised as gross negligence and therefore as a crime.”
14. It was argued that, applying the “ordinary principles of the law of negligence”, no duty of care was owed by Mr. Wacker to the 60 occupants of the container. It was contended that Mr. Wacker and each of the occupants of the container were jointly engaged in an unlawful enterprise with the intention that each should succeed in evading the immigration laws of the United Kingdom.

15. It was argued that although Mr. Wacker was charged with the making or carrying out of the arrangements to facilitate the illegal entry into the United Kingdom of the occupants of the container, as each of them was an illegal entrant, that they were all jointly engaged in one criminal activity.
16. It was contended, as reflected by the evidence given by the two survivors, that the occupants of the container were aware that in order for them to achieve their objective (their illegal entry into the United Kingdom) they would have to be concealed during certain periods of their journey, that such concealment necessarily involved discomfort and danger and that, in order to reduce the chance of being heard or smelt (and thus discovered) by officials at the port of Zeebrugge or whilst on the ferry itself or upon entering the United Kingdom at Dover, the vent to the container would have to be closed.
17. If, as was contended by the Crown, (and which for the purposes of the arguments, was accepted) it was Mr. Wacker who had closed the vent to the container just outside Zeebrugge, it was done in order to assist both him and the occupants of the container to achieve their joint, necessarily hazardous, objective of entering into the United Kingdom, evading the immigration laws and avoiding discovery by officialdom. In all of the circumstances, it was submitted, there could be no duty of care owed by one party to a joint breach of the immigration laws to another party so engaged.
18. It was further argued that it was impossible to define or establish the time at which 'the breach of duty', if capable of being owed, was said to have occurred. The breach of duty was, in this case, not said to be the act of closing the vent (because that act occurred outside the jurisdiction of the Court) but to be a failure by Mr. Wacker to open the vent of the container at some unspecified time after the vent had been closed.
19. In support of the submissions the following cases were relied on:
R v ADOMAKO [1994] 99 Cr.App.R. 362
R v BATEMAN [1925] 19 Cr.App.R. 8

HILLEN v I.C.I. (ALKALI) LIMITED [1934] 1 KB 455
SMITH v JENKINS [1970] 119 CLR 397
JACKSON v HARRISON [1978] 138 CLR 438
ASHTON v TURNER and Another [1981] 1 QB 137
PITTS v HUNT and Another [1991] 2 QB 24
HALL v HEBERT [1993] 2 SCR 159
Re: FRANK ITALIANO & GUISEPPE BARBARO [1993] 114 ALR 21
REGINA v RUNGZABE KHAN & TAHIR KHAN [Transcript, 18th March
1998]
REGINA v SINCLAIR, JOHNSON & SMITH [Transcript, 21st August 1998]
REGINA v GURPAL SINGH [Transcript, 19th February 1999]

20. On a review of the above authorities it was submitted that the conclusion to be drawn therefrom was that because of the nature of the activity that Mr. Wacker and the occupants of the container were jointly engaged in:
- (a) no duty of care could be established as being owed by him to them;
 - (b) alternatively, given that what was alleged was an omission or failure to act, the relevant time at which the 'duty' arose could not properly be ascertained;
 - (c) that even if an appropriate standard of care could be established, that as a matter of policy, where joint illegality was engaged in, the Courts should not fix a standard, the illegality displacing what would otherwise be a duty of care.
21. The Crown contended that the standard of care to be applied was capable of being ascertained, namely that of the competent and experienced driver of a heavy goods vehicle, carrying 60 people in the conditions known to him, and that, applying that standard, there was no difficulty in the Court ascribing to the driver, Mr. Wacker, the duty of checking upon the welfare of his passengers during the course of the journey.

22. It was further argued by the Crown that the failure to open the vent so as to ensure a sufficient supply of air for the occupants of the container to breathe was incidental to the criminal activity in which they were engaged.
23. The learned Judge ruled:
- (i) that no duty of care could be established if the Court could not determine an appropriate standard of care;
 - (ii) the Court cannot determine a standard of care in circumstances where it is compelled to weigh and adjust the conflicting demands of joint criminal activity and the safety of the participants in order to identify the appropriate standard of care;
 - (iii) where the criminal activity engaged in was merely incidental to the act complained of, no conflict between the demands of the criminal activity and the safety of the participant arose.
24. The learned Judge concluded that the distinction between facilitating entry for someone else and seeking to gain illegal entry was important when considering whether the negligent failure which the Crown complained of was merely incidental to the illegal activity for which each victim of the manslaughter counts was himself responsible. He went on to decide that the distinction between the activities of the driver and the passengers highlighted the differences between the criminal activities for which the driver was responsible, for which the passengers were responsible and for which there was joint responsibility.
25. The learned Judge went on to decide that as the occupants of the container could not be said to have played any part in the making of the transportation arrangements, then the failure to open the vent on the container did not arise from their own illegal activity or illegal activity for which they shared a joint responsibility.

26. The learned Judge decided therefore that Mr. Wacker did owe a duty of care to the passengers, that it was open to the jury to find that there was a duty of care, that Mr. Wacker breached that duty, and that the breach was so bad as to amount to a criminal omission.
27. It is submitted that the learned Judge's conclusions are wrong. The closing of the vent was of fundamental importance to the success of the criminal enterprise with which Mr. Wacker and the occupants were jointly engaged in. The opening of the vent whilst on the ferry or at any time prior to the clearing of all customs and immigration controls at Dover could have resulted in the failure of the illegal activity for which both the driver and the occupants bore joint responsibility.
28. The learned Judge in deciding as he did, was purporting to determine a standard of care by balancing that which was required to be done in order to achieve the object of the criminal enterprise that all were engaged in with safety of the occupants of the container: by failing to open the vent the driver, Mr. Wacker, was ensuring that the occupants were not discovered; his omission had, however, the effect of compromising, with tragic consequences, the safety of the participants.
29. The learned Judge, by his ruling, decided that which he had concluded the Court should not do.
30. Further, the learned Judge was, it is submitted, in error in concluding as he did, that the non-opening of the vent was only incidental to the illegal activity which the occupants were engaged in.

SUMMING UP

31. In the course of his summing up the learned Judge repeated to the jury that which he had concluded in his Judgement at the close of the Crown's case on the question of whether Mr. Wacker owed a duty of care to those within the

container. He directed them to the effect that if there was no shared responsibility between the driver and the occupants for the making of the travel arrangements then the jury would conclude that a duty of care was owed by Mr. Wacker to the occupants; that the reality was that if Mr. Wacker knew of the presence of the occupants in the container, given the lack of choice offered to the occupants as to the means by and the conditions in which they travelled to the United Kingdom, then the jury would decide that a duty of care was owed by him to them.

32. Having directed the jury on the question of whether a duty was owed by Mr. Wacker to the occupants, the learned Judge proceeded to direct them that the appropriate standard of care was that he “failed to take such care for the safety of the occupants as was reasonably to be expected of a reasonably prudent driver”.

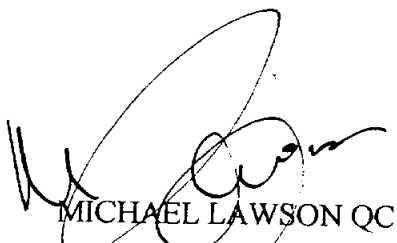
33. It is submitted that this standard was artificial. It required the jury to ignore the reality and objectives of the joint illegal activity with which both Mr. Wacker and the occupants were actively engaged in, and instead imported as a standard of care that which might be expected from, for example, a coach driver carrying passengers on a day trip to the sea-side.

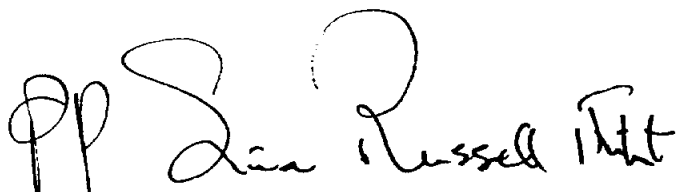
SENTENCE

34. It is submitted that the sentence imposed was, in the circumstances, manifestly excessive. The total period of 14 years imprisonment was, despite the appalling tragedy that befell the occupants of the container, overall too long.

35. Mr. Wacker is a Dutch national, ordinarily resident in Rotterdam. He had some convictions for offences of a wholly dissimilar nature, and had not served a custodial term before. There was no evidence of any prior involvement by Mr. Wacker in offending such as was alleged in this case.

36. There was evidence available to the Court that the conspiracy was already in existence at the time Mr. Wacker was said to have joined it, namely on the 12th or 13th June, some 5 or 6 days before the fateful journey.
37. Although, once recruited, the jury had found that he played a significant part (as the Crown had contended), there was no activity earlier than that time that could be attributed to him.
38. When he joined it was at a time when he was under personal pressure to obtain a job so that he could show the Dutch authorities that he could be permitted to marry and live with his girlfriend, a non-EC national, in Holland.
39. Whilst it is obvious that any criminal conspiracy such as the one he joined was motivated solely by money, there was no evidence that Mr. Wacker had received any reward following his very short involvement with the conspiracy.
40. The deaths of the occupants flowed, not from any intent to cause harm, but from his single omission to act at the right time.
41. 8 years imprisonment for his involvement in the conspiracy and a further 6 years imprisonment consecutive for the manslaughter counts is, it is submitted, too long in total.


MICHAEL LAWSON QC
23 Essex Street
London WC2R 3AS


SIMON RUSSELL FLINT

30 April, 2001

**IN THE COURT OF APPEAL
(CRIMINAL DIVISION)**

BETWEEN:

PERRY WACKER

v

REGINA

**GROUNDS OF APPEAL
AGAINST CONVICTION AND SENTENCE**

The Applicant respectfully makes reference to the Advice of Counsel attached herewith.

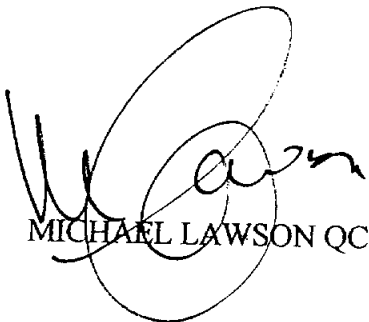
GROUNDS OF APPEAL AGAINST CONVICTION

1. The learned Judge erred in failing to uphold a submission of 'no case' made on behalf of the Applicant at the conclusion of the Crown's case.
2. The learned Judge wrongly concluded that there existed an identifiable standard of care owed by the Applicant to the occupants of the container, and that thus a legal duty of care was owed by the Applicant to what were described as his passengers.

3. The learned Judge, in the course of his summing-up, wrongly and artificially directed the jury that the appropriate standard of care to be applied, and about which they had to be satisfied, was that he "failed to take such care for the safety of the occupants as was reasonably to be expected of a reasonably prudent driver".

GROUND OF APPEAL AGAINST SENTENCE

4. The Applicant was sentenced upon Count 1 to a term of 8 years imprisonment. Upon each of the 58 Counts of manslaughter the Applicant was sentenced to 6 years imprisonment upon each Count concurrently, but to run consecutively to the sentence of 8 years imprisonment upon Count 1, making a total of 14 years imprisonment.
5. It is submitted that the totality of the sentence is manifestly excessive given the role played by the Applicant, the length of his participation in the conspiracy, and that the cause of death was a single omission to act.



MICHAEL LAWSON QC

23 Essex Street
London WC2R 3AS



SIMON RUSSELL FLINT

30 April, 2001



THE COURT SERVICE
Criminal Appeal Office
Royal Courts of Justice,
Strand, London, WC2A 2LL
Telephone: 020 7947 7082 (Direct line)
(Direct line - between 9.00 am and 5.00 pm)
Fax: 020 7947 6900 DX: 44450 Strand
Minicom: 020 7947 7594

All letters should be addressed to
The Registrar

The Governor
HMP RYEHILL
ONLEY
NEAR RUGBY
WARWICKSHIRE
CV23 8SZ

Our Ref: 200102556 S2

Your Ref: CX7496

Date: 30/07/2001 16:18

Dear Sir / Madam

Regina v PERRY WACKER

Please note that the said PERRY WACKER has been given leave to appeal against conviction, the sentence application for leave to appeal having been referred directly to the Full Court.

The next stage will be for a hearing date to be fixed and notification of the date will have to be sent to the appropriate persons. Please note that if the appellant / applicant is released on Home Detention curfew you are under a duty to inform this office immediately of the appellants / applicants release address. It would also be of great assistance if you supply us with any contact telephone number you have for the appellant / applicant.

Yours faithfully

Mrs J Chowdhury
For Registrar



COURT OF APPEAL CRIMINAL DIVISION
REPRESENTATION ORDER

Ref No: 20010235682

Access to Justice Act 1999 – Criminal Defence Service Regulations 2001

APPELLANT Forenames	Surname
PERRY	WACKER

WHERE DETAINED	PRISON NUMBER
HMP RYEHILL	CX7496

ADDRESS (If not detained)

CROWN COURT	TRIAL JUDGE	DATE
MAIDSTONE CROWN COURT	MOSES	05/04/2001

The Honourable Mr Justice MCCOMBE, in accordance with the above provisions, hereby grants a representation order to the appellant for the following purpose:

The preparation and presentation of an appeal against Conviction, the Single Judge having granted leave to appeal.

The preparation and presentation of an application for leave to appeal against sentence, and, if granted, the appeal.

The order consists of representation by Counsel as named below:

Counsel

M LAWSON QC

DX 148 CHANCERY LANE

S RUSSELL-FLINT

DX 148 CHANCERY LANE

Dated 28/06/2001

Signed

Walter Cheek
For Registrar of Criminal Appeals

Criminal Appeal Office
Royal courts of Justice
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